dictions, however, which admit statements as to present pain, or as to present physical condition, the holding is that the unavailability of the witness at trial is immaterial. These statements are regarded as the expression of the person's feelings at the moment when they were most strongly felt, and so given their best possible expression. This view may properly be taken as to involuntary expression of present feeling. In their case the original statement, by reason of its spontaneity, is better than any which may be obtained subsequently, even when on the stand with the aid of cross examination. But the larger exception stated has not this guaranty of spontaneity; the original statement loses its peculiar value and character if the party is available as a witness at the time of trial. It is true the individual feelings are most vividly in mind at the time they are experienced; but this fact is true of all experience and so cannot be made the test.

In People v. Wright,[5] the Court held that a statement made by a woman as to her then condition of pregnancy was admissible, although not made to a physician. No mention is made of the earlier California cases,[6] in which the anomalous rule of the New York Courts was approved and adopted and a contrary result reached. The view suggested by the principal case is more logical than that of the Estate of James,[7] and it may be taken as at least preparing the way for the adoption of a more liberal and rational rule in this jurisdiction as to the admission of statements of present physical "condition" or "present pain."

C. S. J.

INNKEEPERS: RIGHTS OF GUESTS.—The decided cases are few, in which a guest has sought to recover of an innkeeper for injuries inflicted by a hotel servant. But it seems unquestionable, both on principle and by analogy, that the innkeeper owes a duty to his guest that he shall be treated with courtesy and protected from assault. Thus, in Nebraska it was held that an innkeeper was liable for injury to a small boy, who was a guest, through the accidental discharge of a pistol in the hands of an employee, even though the accident happened in a room, not intended for guests, into which the boy had intruded.[1] The court's decision seems to have been based upon the theory that the innkeeper's liability is similar to that of a common carrier, who has been held responsible for assaults and insults suffered by passengers. The contract between carrier and passenger obligates the carrier not only to transport the passenger, but to secure him

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[5] People v. Wright, (Jan. 9, 1914) 46 Cal. Dec. 74.

[6] Estate of James, (1899) 124 Cal. 653, 57 Pac. 579; Green v. Pacific L. Co., (1900) 130 Cal. 435, 62 Pac. 747.

[7] Estate of James, supra.

[1] Clancy v. Barker, (1904) 71 Neb. 83, 91, 98 N. W. 440, 103 N. W. 446.

respectful treatment and security from assault and insult from strangers or employees.[2] In Missouri an innkeeper was held liable for injuries to a guest resulting from an assault by an employee, even where the employee was acting wilfully and wantonly, rather than within the apparent scope of his employment.[3] In Minnesota, a saloonkeeper was held liable for an assault upon a guest by a person not the saloonkeeper nor his servant.[4] And in New York, a hotel keeper has been held liable to a female guest for a servant's unjustified acts in forcing his way into her room, subjecting her to the mortification of an exposure of her person in scant attire, accusing her of immoral conduct, and ordering her and her visitor to leave the hotel.[5]

On the other hand, in California, in 1904,[6] the court declared that "the industry of counsel and our own researches have not resulted in the discovery of more than a single case in which the rule of liability," as recognized in the case of carriers, "has been extended to innkeepers." The single case referred to was a Pennsylvania case,[7] in which it was said to be a plain matter of common law that, "where one enters a saloon or tavern opened for the entertainment of the public, the proprietor is bound to see that he is properly protected from assaults or insults, as well of those who are in his employ, as of the drunken and vicious men whom he may choose to harbor." In that case the innkeeper was present at the time of the assault on the guest, and the California court repudiated it as authority, and not finding the other precedents mentioned above, held that the innkeeper would not be liable for an assault by his servant on a guest in the absence of personal negligence on the part of the innkeeper. The Nebraska case which we have mentioned above, came again before the Federal Circuit Court of Appeals,[8] and the Federal court differed from the State court, on the ground that the innkeeper's employee was not, at the time of the accident, doing anything that was within the actual or apparent scope of his employment, and also for the further reason that a common carrier's liability in such cases cannot be applied to an innkeeper. We believe the Nebraska court's view to be sounder than that of the Federal court.

The California court in the case cited said: "An innkeeper is, no doubt, guilty of negligence if he admits to his hotel, or permits to remain there, whether as guest or servant, a person of known

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[2] Palmeri v. Manhattan Ry. Co., (1892) 133 N. Y. 261, 30 N. E. 1001; Gillespie v. Brooklyn Heights R. R. Co., (1904) 178 N. Y. 347, 70 N. E. 857.

[3] Overstreet v. Moser, (1901) 88 Mo. App. 72.

[4] Curran v. Olson, (1903) 88 Minn. 307, 92 N. W. 1124.

[5] De Wolf v. Ford, (1908) 193 N. Y. 397, 86 N. E. 527.

[6] Rahmel v. Lehndorff, (1904) 142 Cal. 681, 76 Pac. 659.

[7] Rommel v. Schambacher, (1887) 120 Pa. 579, 11 Atl. 779.

[8] Clancy v. Barker, (1904), 131 Fed. 161.

violent or disorderly propensities, who will probably assault or otherwise maltreat his guests, and for the consequences of such negligence he may be liable in damage." A recent case in a Federal District court in Tennessee[9] rules that an innkeeper, who retains in his employ a servant after knowledge of his violent and quarrelsome character and his disposition to assault guests, is liable to a guest for a wrongful assault made upon him by such servant. The Federal court here bases its decision squarely on the above suggestion of the California court, instead of on the broader ground of the innkeeper's general liability as maintained in the better considered cases.

W. C. J.

INTERNATIONAL LAW: CONSTRUCTION AND OPERATION OF THE HAGUE TREATY: INTERNMENT.—The petitioners in ex parte Toscano et al.[1] were some two hundred officers or soldiers of the Mexican Federalist army, who were stationed at Naco, Sonora, Mexico. On April 13, 1913, the petitioners and other Federalist troops occupying the town were driven out by the Constitutionalist troops and to avoid capture, they took refuge in the United States. Immediately upon reaching the territory of the United States, the petitioners and others surrendered to the armed forces of the United States by whom they were disarmed and interned within the territory of the United States and at a distance from the theater of the war. The petition for a writ of habeas corpus was denied on the ground that the internment was in accordance with Chapter 2, Art. II of The Hague Treaty of Oct. 18, 1907, ratified by the United States and Mexico, November 27, 1909,[2] which provides that "a neutral power which receives on its territory, troops belonging to the belligerent armies, shall intern them, as far as possible, at a distance from the theater of war"; that the internment did not violate the Constitution of the United States, inasmuch as the fourth and sixth amendments were not applicable, if the petitioners were in custody by due process of law; and the fifth amendment was not violated because "due process of law" as used in that amendment was intended to convey the same meaning as "by the law of the land" as found in the twenty-ninth chapter of Magna Charta; that this provision of the Hague Treaty did not require legislation to render it effective and was, therefore, a part of the law of the land which the President had full power to execute.[3]

The court made it clear that "internment" was not a punishment for crime but a means agreed upon to care for alien forces seeking refuge in neutral territory and to prevent them from

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[9] Duckworth v. Appostalis, (1914) 208 Fed. 936.
[1] District Court, S. D. California, (Nov. 5, 1913) 208 Fed. 938.
[2] 36 Stat. 2324.
[3] In re Neagle, (1890) 135 U. S. 1, 34 L. ed. 55.